THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2144, 2145, 2146, 2147 and 2148 of 2024

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Khambarkhera Thermal Power Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Utraula Thermal Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Kundarkhi Thermal Power Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Maqsoodapur Thermal Power Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Barkhera Thermal Power Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Bajaj Energy Limited (BEL),

TC - 13, Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh

..... Petitioner

VERSUS

U.P. Power Corporation Ltd. (UPPCL)

Shakti Bhawan, 14-Ashok Marg, Lucknow-226001

..... Respondent

FOLLOWING WERE PRESENT

1. Sh. Hemant Sahai, Advocate, UPPCL
2. Sh. Nitish Gupta, Advocate, UPPCL
3. Sh. Vaknika Tyagi, Advocate, UPPCL
4. Sh. Anil Kumar, EE, UPPCL
5. Sh. Dharm Ratna, AE, UPPCL
6. Sh. Jagnayak Singh, SE-PPA, UPPCL
7. Sh. Amit Kapur, Advocate, BEL
8. Sh. Akshat Jain, Advocate, BEL
9. Sh. Avdesh Mandloi, Advocate, BEL
10. Sh. Ketan Parekh, AVP, BEL
11. Sh. Amit Kr. Pandey, Sr. Manager, BEL

ORDER

(DATE OF HEARING: 30.09.2025)

1. During the hearing, Sh. Hemant Sahai, counsel for UPPCL, submitted that the present petitions were filed under Section 86(1)(a) & (b) of the Electricity Act, 2003 read with UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up. The matter herein involves dispute related to entitlement under law. Therefore, the presence of a Judicial Member in the quorum for the hearing would be required in view of sanctity of the Commission's Order and prospective challengeabilty. Sh. Sahai, in support of his argument, referred to the Commission's Order dated 18.08.2025 in Petition No. 2106 of 2024 titled MEIL Lanco Anpara Power Ltd. v. UPPCL in the matter of reimbursement of expenditure incurred towards transportation of fly ash. He pointed out that while Petition No. 2106 of 2024 was filed under Section 86(1) (b), the Commission, in its Order, had observed that the matter would be decided after joining of Member (Law). Sh. Sahai further relied upon the following judgments of the Hon'ble Supreme Court to buttress his points:

i. T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd, (2014) 11 SCC 53, (Paras 58-59)

ii. State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21, (Paras 103, 125)

2. In response, Sh. Amit Kapur, Counsel for the Petitioner, argued that the present true up Petitions have not been filed under Section 86(1)(f) of the Act, therefore, the presence of a Legal Member was not mandatory for the hearing of these regulatory proceedings. He referred to the judgment of the Hon'ble Supreme Court in State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21, (Para 116). Sh. Kapur further submitted that the Petition number 2106 of 2024 was filed in compliance to the Commission Order dated 13.06.2023 in Petition No. 1884 of 2022, which was filed under Section 86(1)(b) & (f), requiring the presence of a Legal Member in the quorum. He further contended that the reliance placed by UPPCL's Counsel on the judgment of the Hon'ble Supreme Court in State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21 was not relevant to the instant matter, as quoted judgement was related to selection criteria of chairperson in terms of EA, 03 and not that Member (Law) was mandatory for tariff determination

proceedings. He further submitted that Hon'ble Supreme Court in its various judgements had distinguished between adjudicatory, regulatory and advisory functions of the Commission, emphasizing that tariff determination did not fall under the judicial function of the Commission.

3. Sh. Kapur further referred to the Commission's Order dated 20.08.2025 in Petition No. 2130 of 2024 titled Dhariwal Infrastructure Ltd. v. NPCL in the matter of additional capital expenditure and submitted that in the present true up petitions, the Petitioner had also raised the claims related to additional capital expenditure. He further referred to the Commission's Order dated 03.09.2025 in Petition No. 2151 of 2024 in the matter of true up of Srinagar Hydro Electric Project for FY 2019-24, which was scheduled for final hearing on 23.09.2025.

4. Sh. Hemant Sahai reiterated that adjudicatory functions are not restricted solely to matters under Section 86(1)(f) of the Act. He submitted that any dispute, whether covered under Section 86(1)(f) or any other clause of Section 86(1), necessitated the adjudicatory process and required the presence of a Judicial Member in the quorum. He relied upon the judgment of the Hon'ble Supreme Court in State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21, (Para 103) and T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd, (2014) 11 SCC 53, (Para 55).

5. Consequently, Sh. Kapur submitted that disputes related to tariff fixation were excluded from the requirement of a Legal Member in the quorum. He reiterated the judgment of the Hon'ble Supreme Court in T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd, (2014) 11 SCC 53, (Para 55). He further submitted that the Commission had passed Tariff Order dated 08.09.2025 in Petition No. 2166 of 2024 for UPPTCL and Tariff Order dated 08.09.2025 in Petition No. 2231 of 2025 for UPSLDC without Judicial Member, and hence there was no justification in keeping these petitions in abeyance on this pretext. He also emphasized that UPPCL had not contested this point of requirement of presence of Member (Law) neither in true up/ ARR matter of UPPTCL (Petition No. 2166 of 2024) and UPSLDC (Petition No. 2231 of 2025) nor in maintainability proceedings of true up matter of UPRVUNL, RPSCL and AHPCL. Therefore, he requested the present true up petitions may also be heard by the Commission.

6. The Commission directed both parties to file written submission carrying their arguments and quoted judgements within one week from the date of hearing to decide the further course through an order. The direction was given in the open court but has not been complied so far, thus, forcing this Commission to repeat the directions through these record of proceedings. Parties are again being directed to file their written submissions immediately within 3 days of issuance of this order.

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 15.10.2025